

Rule Changes Effective February 1, 2016

SECTION .2000 - RULEMAKING AND CONTESTED CASE PROCEDURES

10A NCAC 09 .2001 PETITIONS FOR RULEMAKING

(a) Any person wishing to request the adoption, amendment, or repeal of a rule made by the Child Care Commission (hereinafter referred to as the Commission) shall make the request in a written petition to:

Rulemaking Coordinator
Division of Child Development and Early Education
2201 Mail Service Center
Raleigh, North Carolina 27699-2200

(b) Petitions for adoption or amendment of a rule shall include a draft of the proposed rule, and the name and address of the petitioner. The petition may also include any of the following items known to the petitioner:

- (1) the statutory authority for the Commission to promulgate the rule;
- (2) the effect on existing rules;
- (3) any data supporting the proposal;
- (4) the effect of the proposed rule on existing practices in the area involved, including cost factors;
- (5) the names and addresses of those most likely to be affected by the proposed; and
- (6) the reasons for the proposal.

(c) The Division Director or designee shall present the petition to the Commission to determine whether the Commission has statutory authority to grant the petition.

(d) The Commission shall render a decision as to whether to deny or approve the petition at its next scheduled meeting, which may be no later than 120 days after submission of the petition. If the decision is to deny the petition, the Division Director or designee shall notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Commission shall initiate rulemaking in accordance with G.S. 150B-21.2.

History Note: *Authority G.S. 110-85; 143B-168.3; 150B-20;*
Eff. November 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,
2015;
Amended Eff. February 1, 2016.

10A NCAC 09 .2002 RULEMAKING PROCEDURES

(a) The rulemaking procedures for the Secretary of the Department of Health and Human Services codified in 10A NCAC 01A .0104 are hereby incorporated by reference including subsequent amendments and editions, with the following modifications:

- (1) Correspondence related to the Commission's rulemaking actions shall be submitted to:
Rulemaking Coordinator
Division of Child Development and Early Education
2201 Mail Service Center
Raleigh, North Carolina 27699-2200
- (2) "Hearing officer" shall mean the Chairman of the Child Care Commission or the Chairman's designee.

(b) Copies of 10A NCAC 01A .0104 may be inspected in the Division at the address given in Subparagraph (a)(1) of this Rule. A copy of this Rule may be found on the Office of Administrative Hearings website at <http://reports.oah.state.nc.us/ncac.asp>.

History Note: *Authority G.S. 110-85; 143B-168.3; 150B-20;*
Eff. November 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,
2015;
Amended Eff. February 1, 2016.

10A NCAC 09 .2003 DECLARATORY RULINGS

(a) All requests for declaratory rulings shall be by written petition as described in Paragraph (b) of this Rule and shall be submitted to:

Rulemaking Coordinator
Division of Child Development and Early Education
2201 Mail Service Center
Raleigh, North Carolina 27699-2200

(b) Every request for a declaratory ruling shall include the following information:

- (1) the name and address of the petitioner;
- (2) the statute or rule to which the petition relates;
- (3) a statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him or her; and
- (4) the consequences for the petitioner of a failure to issue a declaratory ruling.

(c) When a request for a declaratory ruling meets the requirements of Paragraph (b) of this Rule, the Commission shall determine whether it has the statutory authority to grant the declaratory ruling and if so, grant the request for a declaratory ruling within 30 days of the receipt of the petition.

(d) A declaratory ruling procedure shall consist of written submissions, oral hearings, and such other procedures as the Commission deems necessary to understand the issues involved in the particular case.

(e) If the Commission grants the declaratory ruling request, the Commission shall issue notice by posting on the Division's website at <http://ncchildcare.dhhs.state.nc.us/general/whatsnew.asp> that written comments may be submitted or oral presentations received at a scheduled hearing.

(f) A record of all declaratory ruling proceedings shall be maintained by the Division and shall be available for public inspection during regular business hours. This record shall contain:

- (1) the original request;
- (2) the reasons for refusing to issue a ruling;
- (3) all written memoranda and information submitted;
- (4) any written minutes or audio tape or other record of the oral hearing; and
- (5) a statement of the ruling.

History Note: Authority G.S. 110-85; 143B-168.3; 150B-4;
Eff. November 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Amended Eff. February 1, 2016.

10A NCAC 09 .2004 CONTESTED CASES: DEFINITIONS

The following terms shall have the following meaning for this Section:

- (1) "Department" means the Department of Health and Human Services;
- (2) "Hearing" means a contested case hearing as provided in G.S. 150B-2(2) and 150B-23;
- (3) "OAH" means the Office of Administrative Hearings.

History Note: Authority G.S. 110-85; 110-94; 150B-23;
Eff. November 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Amended Eff. February 1, 2016.

10A NCAC 09 .2005 CONTESTED CASES: REQUEST FOR DETERMINATION

(a) In accordance with G.S. 150B-22, any person may request a determination of his or her legal rights, privileges, or duties as they relate to laws or rules administered by the Department.

(b) All petitions for hearings regarding matters under the control of the Department shall be filed with the OAH in accordance with G.S. 150B-23 and 26 NCAC 03 .0103. In accordance with G.S. 1A-1, Rule 4(j)4, the petition shall be served on a registered agent for service of process for the Department. A list of registered agents may be obtained from the Office of General Counsel, 2001 Mail Service Center, Raleigh, NC 27699-2001.

History Note: Authority G.S. 150B-22; 150B-23;
Eff. November 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,
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